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Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, Indiana 46204

In re Application of
David D. Griner, et al.
Application No. 10/624,077
Filed: July 21, 2003
For: **SYSTEM AND METHOD OF CREATING
DIGITAL RECORDINGS OF LIVE
PERFORMANCES**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed May 21, 2004 under 37 CFR §1.102(d) (and supplemented on June 18, 2004) to make the application special.

A grantable petition under 37 CFR §1.102(d) and MPEP §708.02, section II (Infringement), must be accompanied by the required fee and a statement alleging:

- (1) that there is an infringing device or product actually on the market or method in use;
- (2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
- (3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

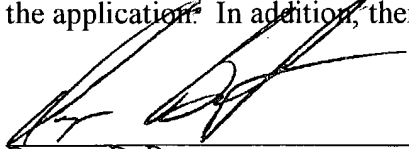
Further, Applicant must provide a copy of each of the references deemed most closely related to the subject matter encompassed by the claims if the references are not already of record.

Applicant's submission is deficient in that no references have been submitted. As stated, Applicant must provide a copy of each of the references deemed most closely related to the subject matter if the references are not already of record. It is not clear whether the art already submitted within the application is deemed most closely related to the subject matter given that there was no discussion with respect to references within Applicants' petition or the supplement.

Accordingly, the Petition is **DENIED**.

The application file is being forwarded to Central Files to await examination in its proper turn based on its effective filing date. Any request for reconsideration must be filed within two months of the mailing date of this decision.

It is noted that Applicant's petition supplement was for the purpose of clarifying the Assignee information and referencing an alleged submission by Applicants on April 29, 2004. However, there is no record of either Assignee mentioned in the Petition (and supplement) associated with the application. In addition, there is no submission of record for April 29, 2004.


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